

BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	No. 16-94-38937
Against:	)	
	)	
WILLIAM JEROME VOSTINAK, M.D.	)	DEFAULT DECISION
7919 Zenobia Street	)	<u>AND ORDER</u>
Westminster, Colorado 80030	)	
	)	
Physician and Surgeon	)	
Certificate No. G44481	)	
	)	
Respondent.	)	
	)	

---

On or about October 3, 1995, the respondent was served with Accusation No. 16-94-38937, a Statement to Respondent, Notice of Defense in blank, and copies of relevant sections of the California Administrative Procedure Act as required by sections 11503 and 11505 of the Government Code. Service was accomplished by certified mail directed to the last address of record<sup>1/</sup> for respondent on file with the Medical Board of California. (See Exhibit 1, attached hereto.)

Respondent Vostinak failed to file a Notice of Defense within the fifteen days allowed by section 11506 of the Government Code. As a result, the default of respondent was entered.

---

1. See Title 16 of the California Code of Regulations section 1303 which requires licensees to file a current mailing address with the Medical Board.

Respondent has thereby waived his right to a hearing to contest the Accusation, and the Division of Medical Quality now proceeds without hearing to take action based upon the Accusation, declarations, and documentary evidence on file in accordance with Government Code section 11505(a) and 11520.

#### FINDINGS OF FACT

The allegations of the Accusation, a true and correct copy of which is attached hereto as Exhibit 2 and incorporated by reference herein, are found to be true. (See also Attachment A of Exhibit 2, Record of Out-of-State Discipline.)

#### DETERMINATION OF ISSUES

Pursuant to the foregoing Findings of Fact, respondent has committed acts constituting unprofessional conduct in violation of Business and Professions Code section 2305.

#### ORDER

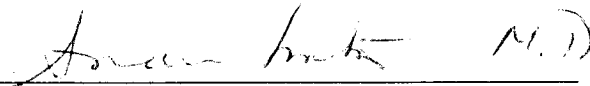
Physician and Surgeon's certificate number G44481, issued to William Jerome Vostinak, M.D. is revoked.

Respondent shall not be deprived of making any further showing by way of mitigation. However, such showing must be made in writing to the Division of Medical Quality, Medical Board of California at 1430 Howe Avenue, Sacramento, California 95825, prior to the effective date of this decision.

This decision shall become effective on FEBRUARY 5, 1996.

DATED: JANUARY 5, 1996

MEDICAL BOARD OF CALIFORNIA  
Department of Consumer Affairs  
State of California

By  M.D.  
ANABEL ANDERSON IMBERT, M.D.  
President, Division of Medical Quality

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 JANA L. TUTON  
Supervising Deputy Attorney General  
3 GAIL M. HEPPELL  
Deputy Attorney General  
4 1515 K Street, Suite 511  
P. O. Box 944255  
5 Sacramento, California 94244-2550  
Telephone: (916) 324-5336

6 Attorneys for Complainant  
7  
8

9 BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
10 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

11 In the Matter of the Accusation ) NO. 16-94-38937  
12 Against: )  
13 WILLIAM JEROME VOSTINAK, M.D. ) ACCUSATION  
7919 Zenobia Street )  
14 Westminster, Colorado 80030 )  
California Physician and )  
15 Surgeon Certificate )  
No. G44481 )  
16 Respondent. )  
17

18 Dixon Arnett, for causes for discipline, alleges:  
19

20 1. Complainant Dixon Arnett makes and files this  
21 accusation in his official capacity as Executive Director of the  
22 Medical Board of California (hereinafter referred to as the  
23 "Board").  
24

25 2. On April 27, 1981, the Medical Board of California  
26 issued physician and surgeon certificate number G44481 to William  
27 Jerome Vostinak, M.D. The certificate expired June 30, 1994.

1           3. Under Business and Professions Code section 2234,  
2 the Division of Medical Quality shall take action against any  
3 licensee who is charged with unprofessional conduct.

4           Under Business and Professions Code section 2305, the  
5 revocation, suspension, or other discipline by another state of a  
6 license or certificate to practice medicine issued by the state  
7 shall constitute unprofessional conduct against such licensee in  
8 this state.

9           Under Business and Professions Code section 118(b), the  
10 expiration of a license shall not deprive the Board of  
11 jurisdiction to proceed with a disciplinary action during the  
12 time within which the license may be renewed, restored, or  
13 reinstated.

14           Under Business and Professions Code section 2428, a  
15 license which has expired may be renewed any time within five  
16 years after expiration.

17           Under Business and Professions Code section 125.3, the  
18 Medical Board of California may request the administrative law  
19 judge to direct a licentiate found to have committed a violation  
20 or violations of the licensing act to pay a sum not to exceed the  
21 reasonable costs of the investigation and enforcement of the  
22 case.

23  
24           4. Respondent has subjected his physician and surgeon  
25 certificate to discipline under Business and Professions Code  
26 section 2305 on the grounds of unprofessional conduct in that on  
27 January 21, 1994, the State of Colorado imposed discipline on

1 respondent's license to practice medicine in that state by  
2 issuing a Letter of Admonition to respondent for commencing  
3 surgery on the wrong leg of a patient. Attached as Exhibit A and  
4 incorporated by reference is a true and correct copy of the  
5 Letter of Admonition from the State of Colorado.

6  
7 WHEREFORE, complainant prays a hearing be had and that  
8 the Medical Board of California make its order:

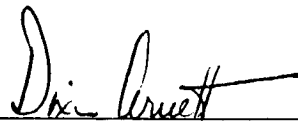
9 1. Revoking or suspending physician and surgeon  
10 certificate number G44481, issued to William Jerome Vostinak,  
11 M.D.

12 2. Prohibiting William Jerome Vostinak, M.D. from  
13 supervising physician assistants.

14 3. Ordering William Jerome Vostinak, M.D., to pay to  
15 the Medical Board of California its costs for investigation and  
16 enforcement according to proof at the hearing, pursuant to  
17 Business and Professions Code section 125.3.

18 4. Taking such other and further action as may be  
19 deemed proper and appropriate.

20 DATED: May 9, 1995

21  
22 

23 DIXON ARNETT  
24 Executive Director  
25 Medical Board of California  
26 Department of Consumer Affairs  
27 State of California

Complainant

26 03573160-  
27 SA95AD0511  
(SM 4/26/95)

EXHIBIT A

# STATE OF COLORADO

## BOARD OF MEDICAL EXAMINERS

Thomas J. Beckett  
Program Administrator

1560 Broadway, Suite 1300  
Denver, CO 80202-5140  
Phone: (303) 894-7690

## Department of Regulatory Agencies

Joseph A. Garcia  
Executive Director

### Division of Registrations

Bruce M. Douglas, Director



Roy Romer  
Governor

January 21, 1994  
MB0294066

William J. Vostinak, M.D.  
8300 N. Alcott Street, Suite 205  
Westminster, CO 80030

Dear Dr. Vostinak:

Panel B of the Board of Medical Examiners has concluded its inquiry regarding your role in the care and treatment of patient C.F. The Panel determined that the matter may not warrant the commencement of formal proceedings against your license to practice medicine. However, the Panel directed that disciplinary action be administered to you in the form of this letter of admonition.

Members of the Panel well appreciate that, in spite of the best intentions, system failures can and do occur in the practice of medicine. However, the Panel is also mindful of the fact that it is the patient who bears the brunt of those system failures. Here, your commencement of surgery upon the wrong leg led to unnecessary surgical risk to the patient, and constitutes grossly negligent medical practice.

By this letter, the Panel solemnly admonishes you and warns you that any complaints disclosing repetition of such conduct may lead to the commencement of formal proceedings against your license to practice medicine, wherein this letter of admonition may be entered into evidence as aggravation.

As you may surmise, over time Board members have had the unfortunate responsibility of reviewing a number of cases involving wrong site surgery. One element that seems common to many of these cases is that the patient is prepped and draped prior to the surgeon's entrance into the operating suite. In order to avoid future mishaps, you may wish to consider a change in procedure so that the patient is not draped until after you visually confirm the intended surgical site, or otherwise modify your approach to insure that the surgical site is identified and confirmed as correct prior to commencing surgery.

Letter to William J. Vostinak, M.D.

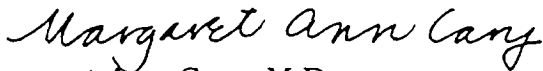
Page 2

January 21, 1994

You are advised that you have the right within twenty (20) days following receipt of this letter to make written request that formal proceedings be initiated against you to adjudicate the propriety of the conduct upon which this letter of admonition is based. If such request is timely made, this letter of admonition will be deemed vacated, and the matter will be processed by means of a formal complaint and hearing, in accordance with the provisions of the Medical Practice Act governing the discipline of licensed physicians.

Very truly yours,

FOR THE BOARD OF MEDICAL EXAMINERS  
INQUIRY PANEL B

A handwritten signature in cursive script that reads "Margaret Ann Cary".

Margaret Ann Cary, M.D.

Chair

MAC/jme